

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRANK MORGAN, et al.,

Plaintiffs,

v.

WALLABY YOGURT COMPANY, INC.,

Defendant.

Case No. [13-cv-00296-JD](#)

**ORDER RE STAY**

This is a consumer class action that challenges defendant Wallaby Yogurt Company, Inc.'s use of the term "evaporated cane juice" (ECJ) -- instead of "sugar" or a similar term -- on its labels listing the ingredients of its food products. Dkt. No. 35.

The Court previously granted defendant's motion for reconsideration (Dkt. No. 64) and stayed the case (Dkt. No. 72) because it agreed with the reasoning in cases such as *Swearingen v. Amazon Pres. Partners, Inc.*, No. 13-CV-04402-WHO, 2014 WL 3934000 (N.D. Cal. Aug. 11, 2014). *See also, e.g., Gitson v. Trader Joe's Co.*, 63 F. Supp. 3d 1114 (N.D. Cal. 2014); *Figy v. Lifeway Foods, Inc.*, No. 13-cv-04828-TEH, 2014 WL 1779251 (N.D. Cal. May 5, 2014).

*Mary Swearingen v. Late July Snacks LLC*, Case No. 3:13-cv-04324-EMC (N.D. Cal.), is another case in this district that has been stayed for quite some time "pending the FDA's decision . . . regarding whether 'evaporated cane juice' (ECJ) is a common or usual name for sugar." *See* Dkt. No. 78 in Case No. 13-cv-4324. In that case, Judge Chen consequently requested that the Commissioner of the Food and Drug Administration shed some light on "whether a final determination regarding ECJ 'is feasible within agency priorities and resources,'" and specifically "if the FDA is likely to issue any further guidance regarding ECJ within the next 180 days." *Id.* The FDA has recently responded that while it is "actively working on a final guidance" to address


1 this issue, it “cannot commit to issuing a decision within 180 days,” and that it instead “currently  
2 anticipates that a final guidance will issue before the end of 2016.” Dkt. No. 80 in Case No. 13-  
3 cv-4324.

4 In light of this statement from the FDA, the Court directs plaintiffs and defendant in this  
5 case to file by September 9, 2015, a statement of no more than five pages each, addressing  
6 whether and why the Court should (or should not) continue to stay this case. Responses to the  
7 other side’s submission are not permitted, and no hearing will be held, unless otherwise ordered by  
8 the Court.

9 **IT IS SO ORDERED.**

10 Dated: August 20, 2015

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JAMES DONATO  
United States District Judge